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SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

October Term, 1971

Docket No. ———

WALTER R. ANDERSON, THEODORE C. ANDERSON, DAVID W. ANDERSON, and LAKELAND DEVELOPMENT CORPORATION, and THEODORE C. ANDERSON, as administrator D.B.N. of the estate of EUGENE ANDERSON, Deceased,

Plaintiffs-Appellants,

vs.

LECON PROPERTIES, INC., a Minnesota corporation,

Defendant-Appellee.

BRIEF OF PETITIONERS ANSWERING THE OPPOSITION BRIEF OF RESPONDENT

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BRIEF OF PETITIONERS ANSWERING THE OPPOSITION BRIEF OF RESPONDENT

INTRODUCTORY

Under the circumstances of this case, it should suffice to answer seriatim the points raised by the respondent.

ARGUMENT

I

Respondent failed to discuss M.S.A. Section 586.01, which is printed at page 4 of the petition.

The importance of this section of the Minnesota Statutes is that it in effect prohibits the Supreme Court of Minnesota as well as all other courts of the state from issuing a writ of mandamus to "control judicial discretion." The importance of the prohibition is made clear by the decision of this court in *Vallely v. Northern Fire and Marine Insurance Company*, cited and discussed at pages 8 and 9 of the Petition. We think the quotation from the cited case on page 9 of the Petition to the effect that where courts act beyond their authority and in contravention thereof, their judgments and orders are nullities.

This point is emphasized by the case of *Sache v. Wallace*, 101 Minn. 169, 112 N.W. 386, cited and discussed at pages 8 and 9 of the Petition, where the Supreme Court of Minnesota held that a Judgment granting relief which the law declares shall not be granted is void and renders the judgment subject to collateral attack.

II

The judgment in the mandamus proceedings is subject to collateral attack.

This point was not reached and, hence, was not decided by either the Court of Appeals or the District Court below. Re-

spondent raises the point and that is the reason petitioners are answering it. This point is settled by both the decisions of this Court and also of those of the Supreme Court of Minnesota in the *Vallely* case of this Court and the cases of *Norris Grain Company v. Nordaas*, 232 Minn. 991, 46 N.W. 2d 94 and *Sache v. Wallace, supra.* The *Norris Grain Company* case is cited and discussed at pages 8, 9 and 10 of the Petition. In that case the court held that where, as here, the court acts without jurisdiction its judgment is a nullity and may be attacked collaterally at any time and at any place, and that "a court without jurisdiction of the subject matter of an action (as here) can acquire no jurisdiction by erroneous decision that it has jurisdiction."

In the *Norris Grain Company* case, the Supreme Court of Minnesota followed the *Matter of Baltimore Mail S.S. Co. v. Fawcett*, 269 N.W. 379, 199 N.E. 628, 104 A.L.R. 1068. This is the general rule throughout the United States.

46 Am. Jur., *Judgments*, Sections 22 and 657.

III

A Minnesota judgment is always open under Minnesota law for collateral attack for lack of jurisdiction of the subject matter.

This is settled by the decision of the Supreme Court of Minnesota in the *Norris Grain Company case, supra.* There the court said, among other things, (46 N.W. 2d, at p. 99):

> "Where the court has no jurisdiction of the subject matter and that fact appears from the face of the record its orders are a nullity."

That is the situation here and, consequently, under well-settled rules, mandamus proceedings in the Supreme Court of Minnesota are subject to collateral attack at any time and at any place. The quotation in the preceding section of this brief adequately demonstrates that fact.

IV

There was no contested adjudication by the Supreme Court of Minnesota that it had jurisdiction in the Mandamus Proceedings.

This point was not raised in the courts below but, notwithstanding such fact, respondent makes the statement without any legal support therefore that such an adjudication was made. We object to such a statement because it can not be found anywhere in the record. After all, courts speak through their records and where, as here, the decision of the Supreme Court of Minnesota fails to refer to the fact that there was a contest before that court on the question of jurisdiction to issue the mandamus the decision itself settles the matter. A copy of the decision of the Supreme Court is attached hereto and marked Exhibit A.

V

Respondent is liable for action taken "under color" of state law.

At the top of page 8 of respondent's brief, it cites four cases, one of which is the *Rooker* case decided by this court and three other cases decided by Courts of Appeal. Not one of these cases is in point. The *Rooker* case did not involve at all the question of whether the action taken was under color of state law. The

other cases cited involved questions of acts taken by individuals in which there was no resort to or involvement of state law. We have already demonstrated on page 11 of the Petition that the *Rooker* case is not in point for the reason that it holds simply that an action may not be maintained in a Federal Court to set aside a state judgment inasmuch as such an action would be in the matter of a review of the judgment by appeal. But this court has held in *Johnson v. Waters*, 111 U.S. 640, 28 L. Ed. 356, and *Arrowsmith v. Gleason*, 129 U.S. 86, 32 L. Ed. 635, which were cited and quoted from at page 11 of the Petition, that a separate and independent action for relief either upon the grounds that a state judgment is void for lack of jurisdiction or otherwise, does not constitute a review in the nature of an appeal and that such actions are maintainable notwithstanding that they involve the validity of state judgments. We quoted from the *Arrowsmith* case at page 11 of the Petition to show that such is the fact.

That the decisions cited by respondent on page 8 of its brief involving acts of individuals without any involvement of state action are not in point is made very clear by the text in 16 Am. Jur. 2d *Constitutional Law*, Section 557, page 960, where the text reads as follows:

> "It is the established general rule that the provisions of the due process clause in a state constitution and in the Federal Constitution are inhibitions upon the power of government and its agencies, not upon freedom of action of private persons. However, a violation of the due process guaranty may result from the interplay of governmental and private action where it appears that it is only after the initial exertion of state power that private action takes hold."

VI

The vacation of the Anoka county judgment in favor of petitioners and against the respondent by means of the mandamus proceedings instituted by respondent constitutes the deprivation of petitioners' rights to the judgment under color of state law.

This question was not reached below and, consequently, was not discussed at length in the Petition. However, respondent raises the question and we think that, whether the question is properly before the court now or not that it should be answered. The question of the Supreme Court of Minnesota, which the petitioners challenge, involved action under color of state law. This question has been litigated so often and so frequently that we refrain from extended discussion thereof. The rules are well settled by such cases as:

Shelley v. Kraemer, 433 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 845, 3 A.L.R. 2d 441.

N.A.A.C.P. v. Alabama, 377 U.S. 288, 84 S. Ct. 1302, 12 L. Ed. 2d 325.

Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373.

U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239.

U.S. v. Price, 383 U.S. 787, 86 S. Ct. 1152, 16 L. Ed. 267.

The rule is laid down with respect to this matter in the cases cited above and are well summarized by the following quotation from *Shelley v. Kraemer, supra* (433 U.S. 14):

> "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the

state within the meaning of the Fourteenth Amendment, is a proposition which has been long established by the decisions of this Court."

This rule has been followed in the other decisions of this Court quoted above and as far as we can ascertain is generally followed wherever the point in question has been raised. See: *Phillips v. Naaf*, 339 Mich. 539, 52 N.W. 2d 158.

VII

There is no basis for respondent's statement relative to the number of extensions granted by the Supreme Court of Minnesota.

There is nothing in the proceedings in either the Court of Appeals or the District Court to support such a statement. The question has been raised here even though it has not been decided below; but, we shall answer it. Petitioners assert that at least five such extensions were granted and expect to prove its assertions relative to the matter by the records of the Clerk of the Supreme Court of Minnesota.

VIII

The mandamus proceedings of the Supreme Court of Minnesota control the judicial discretion of the district judge of Anoka county.

The mandamus proceedings directed and compelled the District Judge of Anoka County to vacate the amended judgment in favor of the petitioners. The effect thereof was to require the District Judge to do precisely what the Supreme Court of

Minnesota ordered and directed. We differentially submit that this is control of judicial discretion. This is settled by the decisions of the Supreme Court of Minnesota in:

Briggs v. Chicago G.W. Ry. Co. 243 Minn. 566, 68 N.W. 2d 870 and

Swanson v. Alworth, 159 Minn. 193, 198 N.W. 453 (cited at page 8 of the Petition).

IX

Respondent's statement that the district court of Anoka county had no jurisdiction to amend the judgment is without any basis.

Respondent's sole contention is that such jurisdiction is lacking under the state Rule of Civil Procedure, Rule 60.02. This rule is the same as the Federal Rule 60(b). Aside from the rule the District Court of Anoka County had jurisdiction by terms of the remand of the Supreme Court of Minnesota which directed the District Court of Anoka County to grant such relief as the parties might be entitled to. Such a remand, quite apart from Rule 60.02, conferred jurisdiction on the Anoka County Court. In *Maryland Casualty Company v. Waldrep*, 10 Cir., 126 Fed. 555 at page 559, where there was a similar remand, the Court said:

> "But here the judgment of the district court remanding the proceeding to the county court of Pottawatomie County with direction to that court to proceed in accordance with the judgment, constituted a judicial determination that such county court should enter this particular order of surcharge; the judgment became final in that respect; and therefore the questtion of jurisdiction as between

the two county courts to enter the order is not open to review here."

This is another one of those questions which was not raised by either the Court of Appeals or the District Court. We have answered it because it has been raised and quite aside from the question of whether the question is properly before the Court.

CONCLUSION

It is respectfully submitted that this Court should review the decision below in order that we may have judicial consideration of all the points which petitioner urges and which they think entitled them to judgment. After all, this is an important case and the decision of this court will be extremely important to the petitioners as well as to others who may be similarly situated.

Respectfully submitted,

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EXHIBIT A

OPINION

PER CURIAM.

Petition for a peremptory writ of mandamus seeking an order of this court requiring the district court to vacate its order entered April 15, 1970, and the amended judgment entered on April 21, 1970, and to grant petitioner's motion of January 30, 1970.

The issues raised in this proceeding are purely procedural and do not involve a review of any questions going to the merits of the action.

This action was commenced in 1967 and involved claims to real estate which had been sold by Lakeland Development Corporation (Lakeland) to Lecon Properties, Inc., (Lecon) in 1961. The trial was completed on August 30, 1968, and the trial court issued findings of fact, conclusions of law, and order for judgment on March 14, 1969. Judgment was entered on May 26, 1969.

In so far as relevant to this proceeding, the judgment decreed that Lecon "shall reconvey" its interest in the real estate to Lakeland "upon tender and payment" to Lecon by Lakeland "of all monies" Lecon paid to Lakeland and the fee owners for the property, together with taxes and assessments paid by Lecon, plus 6-percent interest per annum from the date of payments to the date of tender. The judgment then provided:

> "* * * Lakeland Development Corporation shall have six months from the date of this Judgment to make such tender and payment; and if Lakeland Development Corporation fails to do so, any claim it may have against Lecon Properties, Inc. and/or said land shall terminate."

Prior to the entry of judgment both Lecon and Lakeland made post-trial motions. Lecon sought amended findings eliminating its obligation to reconvey or in the alternative a new trial. Lakeland joined in a motion for amendment of the findings of fact and conclusions of law, which would permit Lakeland 12 months to make the tender or, in the event of appeal to the Minnesota Supreme Court, 12 months from the determination of the appeal. These motions were denied on May 9, 1969.

On June 12, 1969, following entry of judgment, Lecon appealed from the order denying its alternative motion and from the judgment to this court. As required by Rule 107, Rules of Civil Appellate Procedure, Lecon filed a cost bond. It did not choose to file a supersedeas bond. Rule 108, Rules of Civil Appellate Procedure. Lakeland did not appeal from the denial of its post-trial motion or from the judgment. Presumably, Lecon by its choice not to file a supersedeas bond intended to expose itself to the risk of having to reconvey the property if Lakeland made a tender within the time provided, despite its pending appeal.

On November 26, 1969, the time provided by the judgment for Lakeland to make tender to Lecon as a condition for reconveyance expired. On December 19, 1969, after the judgment became final as to Lakeland, Lecon made a motion in this court to remand the case to the district court to obtain relief from the judgment. Lecon alleged that Lakeland had failed to make the tender and payment and that Lakeland's interest in the land terminated by operation of the judgment, and upon being granted the relief prayed for its pending appeal would be dismissed. Lakeland opposed the motion on the grounds that Lecon's appeal had stayed the time when the tender or payment was required by the judgment to be made.

On January 19, 1970, we ordered this action remanded to the district court "to enable defendant Lecon to make, and the court to hear, a motion for relief from the judgment entered herein." Upon motion of Lakeland and the plaintiffs-respondents to also seek relief from the judgment on remand, this court clarified the January 19 remand order, declaring that the remand was intended to allow the district court to grant such relief from the judgment to any or all of the parties "as the facts and law may require or warrant." We intended thereby that the district court would determine whether in fact the tender or payment contemplated by the judgment had been made and, if no tender or payment was made, resolve the question which then would arise as to whether Lecon's appeal stayed the time to make tender.

In the district court on January 30, 1970, Lecon made a motion for an order that it is entitled to the real estate and that Lakeland take nothing against either the property or Lecon. Lakeland, with plaintiffs-respondents joining, made a motion to amend the judgment of May 26, 1969, to provide that tender or payment be made within 1 year after disposition of the appeal.

In the hearing on these motions Lakeland expressly admitted that no tender or payment had been made by it within the 6-month period provided for in the judgment.

The district court by its order entered on April 15, 1970, denied Lecon's motion but in response to Lakeland's motion ordered that the judgment should be amended to provide:

> "Lakeland shall have nine (9) months from the date of entry of judgment herein, or in the event there is an appeal to the Supreme Court by Lecon, six (6) months after final determination by the Supreme Court, to make such tender and payment, and if Lakeland fails to do so,

any claim it may have against Lecon and/or said land shall terminate."

In a memorandum the trial court explained:

"It was the original intention of the Court to give Lakeland a reasonable opportunity to pay back Lecon and thus regain its land. The Court now realizes that the time limit of six months after judgment was not reasonable even though Lecon had not appealed because of the uncertainty of title for the first three months in which an appeal could have been taken. Lakeland's financial position was such that it would have to use its equity in the land in question to finance repayment to Lecon.

"The Court feels it has the power under Rule 60.02 to amend its original 'conclusions' to give Lakeland six months after final determination by the Supreme Court to pay Lecon. This will make it unnecessary to rule on the more technical question of whether or not Lecon's appeal extended Lakeland's time to tender or repay Lecon."

Lecon then petitioned this court for a writ of mandamus, contending that its appeal did not stay the running of the time as specified in the judgment to make a tender or payment because no supersedeas bond was filed and that because the time to appeal had expired and the judgment had become final, the trial court lacked the authority to amend the judgment.

1. Generally, proceedings in the trial court are stayed only if a supersedeas bond is filed. Rule 108.01, Rules of Civil Appellate Procedure. It is elementary that, except as provided in Rule 108.01(6), the filing of a cost bond, as distinguished from a supersedeas bond, does not stay the proceeding in the trial court. Holmes v. Holmes, 253 Minn. 26, 91 N. W. (2d)

79; Lindberg v. Lindberg, 282 Minn. 536, 163 N. W. (2d) 870. See, also, State, by Clark, v. Robnan, Inc. 259 Minn. 88, 107 N. W. (2d) 51. As stated in 3 C.J., Appeal and Error, § 1448, p. 1322:

> "* * * It may also be stated as the general rule that the running of the time within which a judgment or decree requires a party to perform specified conditions is stayed or suspended pending an appeal from the judgment or decree *with a supersedeas bond.*" (Italics supplied.)

See, also, 4 Am. Jur. (2d) Appeal and Error, § 364. The failure of Lecon to file a supersedeas bond and the failure of Lakeland to take an appeal from the denial of its post-trial motion or the judgment and file a supersedeas bond resulted in a judgment which was in no wise stayed during the pendency of Lecon's appeal.

It necessarily follows that under the terms of the judgment and the undisputed fact of no tender or payment within the time required, Lecon by operation of the terms of the judgment is entitled to the property in question, free and clear of any claims of Lakeland unless the district court had the authority to reopen and amend the judgment.

2. We hold that the district court lacked the authority to amend the judgment entered on May 26, 1969, after the judgment had become final as to Lakeland.

The district court purported to act under the authority of Rules of Civil Procedure, Rule 60.02, which allows a court to relieve a party from a final judgment, order, or proceeding and to order a new trial or grant such other relief as may be just. Rule 60.02 can be utilized only if one of the six grounds

specified exists.[1] Brown's Bay Marine Corp v. Skrypec, 271 Minn. 523, 136 N. W. (2d) 590. The court did not state on which of the six clauses it was basing its decision.

In our examination of the file before us, we find no facts which would justify the granting of relief from the judgment to Lakeland under clauses 1 through 5. If facts were presented to the district court which would have allowed it to act under one or more of these clauses, they were not made part of the record nor were they presented to us when Lakeland appeared to contest this petition.

Therefore, the district court must have relied on Rule 60.02(6)—"any other reason justifying relief from the operation of the judgment." Rule 60.02(6) is a residual clause to cover any unforeseen contingency and it is exclusive of clauses (1) through (5). Newman v. Fjelstad, 271 Minn. 514, 137 N. W. (2d) 181; Simons v. Schiek's, Inc. 275 Minn. 132, 145 N. W. (2d) 548.

The district court seems to have decided that the time limit of 6 months, originally provided for in the judgment, was so unreasonable as to be a "reason justifying relief from the operation of the judgment." We are unable to agree with this conclusion. The court was informed of all the facts necessary to set a time limit at the time the judgment was entered. The court had denied a motion to amend the findings of fact and

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[1] Under Rules of Civil Procedure, Rule 60.02, the court may grant relief "for the following reasons: (1) Mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.03; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."

conclusions of law to provide for a time limit of 1 year or, in the event of an appeal, 1 year from determination of the appeal. Upon this record, nothing new was presented to the court between the time this motion was denied on May 9, 1969, and the time it granted Lakeland's similar motion on April 15, 1970 after the time to amend the judgment had expired.

Rule 60.02(6) was not intended to allow the district court to reopen or amend judgments beyond the normal time limit merely because the court feels it has committed some judicial error. Barrett v. Macdonald, 264 Minn. 560, 121 N. W. (2d) 165. Finality of judicial decisions requires that parties seek relief from judicial error through the appellate process, available to Lakeland in this case.

For the foregoing reasons we grant the writ of mandamus. The district court shall vacate the order of April 15, 1970, and the amended judgment entered on April 21, 1970, and grant petitioner Lecon's motion of January 30, 1970.

Let the writ issue.

MR. JUSTICE KELLY, not having been a member of this court at the time of the submission, took no part in the consideration or decision of this case.